



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,562	07/18/2003	Peter Ho	01-12 RCE	4794
30031 7590 04/04/2007 MICHAEL W. HAAS RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			EXAMINER PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3772	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on January 31st, 2007 have been fully considered but they are not persuasive. The applicant argues that claim 1 of US patent 6,805,117 ("the '117 patent") does not disclose "a substantially frusto-conical shape defined by a first contour panel and a second contour panel" and "a crossover strap extending from one of the first or second contoured panel to a remaining other one of the first or the second contour panel". The examiner disagrees. When referring to claim 1 of patent '117, it clearly states that "the headpiece, the front adjustment strap and the rear adjustment strap define a cap that fits over a patient's head, the cap having a perimeter that extends around a circumference of a patient's head. In a broad sense, that is defined as "a substantially frusto-conical shape defined by a first contour and second contour panel". The fact that "the front adjustment strap and the rear adjustment strap are connectable together and adjustable to adjust the headpiece to fit the patient's head" and that the front adjustment strap with respect to the rear adjustment strap controls a circumference of the perimeter of the cap" indicates that there is "a crossover strap extending from one of the first or second contoured panel to a remaining other one of the first or the second contour panel". Therefore claims 36-39 are still rejected on the grounds of nonstatutory obviousness-type double patenting over claims 1, 6 and 7 of US Patent No. 6,805,117 to Ho et al.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined

Art Unit: 3772

application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 36 and 37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6 and 7 of U.S. Patent No. 6,805,117.

Although the conflicting claims are not identical, they are not patentably distinct from each other because **Claim 36 of the instant application** is broader than patented claim 1 of patent '117, therefore, patented claim 1 of patent '117 "anticipates" instant application claim 36. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). With respect to claim 37 of the **instant application**, the limitations can be found in claims 6 and 7 of patent '117.

4. Claims 38 and 39 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6 and 7 of U.S. Patent No. 6,805,117.

Although the conflicting claims are not identical, they are not patentably distinct from each other because **Claim 38 of the instant application** is broader than patented claim 1 of patent '117, therefore, patented claim 1 of patent '117 "anticipates" instant application claim 36. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). With respect to claim 39 of the **instant application**, the limitations can be found in claims 6 and 7 of patent '117.

5. **Claims 40 and 41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20, 23 and 24 of U.S. Patent No. 6,805,117. Claim 40 of the instant application is broader than patented claim 20 of patent '117, therefore, patented claim 20 of patent '117 "anticipates" instant application claim 40. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). With respect to claim 41 of the instant application, the limitations can be found in claims 23 and 24 of patent '117.**

Allowable Subject Matter

6. **Claims 2-11, 13-23, 25-31 and 33-35 are allowed as stated in the previous office action dated December 1st, 2006.**

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3772

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit 3772



Nihir Patel



PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3772
4/2/07